

REMARKS

Claims 20, 24, 27 through 29, and 35 through 38 stand rejected under 35USC102(b) as being anticipated by Karlsson WO'063. Claims 21, 22, 25, 26 and 30 through 34 stand rejected under 35 USC 103(a) as being unpatentable over Karlsson.

The applicant respectfully disagrees with the final rejection of independent claim 20 under 35 USC paragraph 102 for the following reasons.

In establishing a case of anticipation, the USPTO is required to identify every element set forth in the claim in the prior art reference being applied. ("A claim is anticipated only if each and every element as set forth in the claim is found..." Verdegaal Bros. v. Union Oil Co. of California, 814F.2d628, 631, 2USPQ2D1051, 1053 (Fed. Cir. 1987)). Moreover, the elements must be arranged as required by the claim (In re Bond, 910F.2d831, 15USPQ2D1566 (Fed. Cir. 1990)). Neither of these requirements have been met by the US PTO with respect to the instant 35USC102 rejection.

The first element of former claim 20 recites:

"a hip belt forming a peripherally closed hip opening of the diaper with means for opening and closing the hip belt at at least one location"

The Karlsson references discloses a hip belt comprising band members 9a, 9b. A closing means 10 is provided to attach together the ends of the hip belt 9a, 9b. Karlsson also proposes additional elements 11 and 12 which can be used to fold back the 9a portion of the hip belt such that members 11 and 12 are bonded to each other, thereby shortening the length of hip belt portion 9a and permitting portion 9b to be attached to shortened

portion 9a using member 10 in order to accommodate smaller hip openings (compare figures 1 figures 2 of Karlsson and associated text.)

This disclosure of Karlsson clearly reads on the above cited hip belt recitation of former claim 20. However, former claim 20 also recites structure for the second closing means in the last portion of the claim:

"longitudinally extended second closing means for effecting a holding connection between said hip belt and said crotch region... wherein, in an applied state of the diaper, said second closing means extend in an approximately V-shaped manner with respect to each other from said hip belt to said crotch region".

In finally rejecting claim 20, the US PTO comments on this second closing means limitation as follows (see Final Office Action page 3, third paragraph thereof):

"Furthermore, the examiner contends that the language 'in an applied state' may include any state of the diaper including a state where the ends of the belt are pointing downwards on opposite sides of the diaper forming an approximately V-shaped state where the second closing means (10, 11) would extend in an approximately V-shaped manner with respect to each other from the hip belt to the crotch region as claimed."

The USPTO has thereby clearly used the hip belt disclosure of the Karlsson reference to read not only on the hip belt recitation at the beginning portion of former claim 20 but also on the second closing means recitation at the end of claim 20. This double use of one single structure of the Karlsson reference to cover two independent elements articulated in the claim is improper, since Karlsson cannot simultaneously read on both elements. The logical flaw in this interpretation of the claim is illustrated

by the fact that the US PTO has interpreted "in an applied state" as a state in which the hip belt is opened with the ends of the hip belt drooping down towards the crotch region. This interpretation of the claim is clearly contrary to the structure and arrangement of the elements required by the claim since it interprets the phrase "in an applied state" to describe a state in which the diaper is not attached to the user. With the hip belt open, the diaper falls off the user. No reasonable interpretation of the claim language could construe the limitation of "in an applied state" as a state in which the diaper is not attached to the user. The prior art elements are therefore not arranged as required by the claim language. Moreover, the only reasonable interpretation of former claim 20 is that the hip belt and second closing means limitations correspond to two separate structural elements. The USPTO has thereby also failed to point out the presence of each and every element set forth in the claim. The 35USC 102 rejection is therefore clearly in error.

Rather than appealing this incorrect USPTO claim evaluation and rejection at this particular point, the applicant has elected to restructure the claim language to further clarify distinctions to the Karlsson reference. This has been done by canceling claim 20 and proposing new claim 39. New claim 39 recites a structure for the hip belt in which the applied state is defined as the hip belt being closed. Moreover, the second closing means have been divided into two separate strips extending from sides of the closed hip belt down to the crotch region. The structure claimed by the second closing means has the advantages which were presented in the response to the first Office Action, the contents of which are hereby incorporated by reference. None of the prior art of record discloses such structure or the advantages associated therewith thereby rendering the intervention not only distinguished from the prior art with respect to 35USC 102 but also 35USC 103 requirements. The applicant consequently requests the following:

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Main request: The Applicant requests entry of amendment and passage to issuance since the amendment clearly places the case in a position of allowance and since the language entered in the amendment was necessitated by a previous USPTO error in claim interpretation.

First alternative request: In the event that the main request is not granted, the Applicant requests entry of amendment and issuance of a non-final Office Action in which the second closing means are properly rejected on the basis of prior art. This Office Action is should be non-final since the previous final Office Action was clearly in error, with the grounds of that rejection not being necessitated by an Applicant amendment.

In the event that the main request and the first alternative request are not granted, the Applicant hereby requests entry of amendment for purposes of appeal, since the amendment reduces possible issues on appeal.

No new matter has been added in this amendment.

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Date

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